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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,497	06/03/2005	Hachiro Nakanishi	TAN-352	3477
63479 7590 09/25/2009 HAHN & VOIGHT PLLC 1012 14TH STREET, NW SUITE 620 WASHINGTON, DC 20005				
EXAMINER				
OCHYLSKI, RYAN M				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
09/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/537,497

**Applicant(s)**

NAKANISHI ET AL.

**Examiner**

RYAN OCHYLSKI

**Art Unit**

1791

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 15 September 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-12

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☒ Other: See Continuation Sheet

/Joseph S. Del Sole/

Supervisory Patent Examiner, Art Unit 1791

Continuation of 5. Applicant's reply has overcome the following rejection(s): Applicant's reply has overcome the claim objections made by the Examiner in the Final Rejection mailed on June 15, 2009, but not the art rejections made in that Final Rejection.

Continuation of 13. Other: Applicant has presented one new argument on the merits of the case; the Examiner maintains the art rejections and responses to the old arguments made in the Final Rejection mailed on June 15, 2009.

With respect to Applicant's new argument that porosity and pore size are not taught to be result effective variables, the Examiner disagrees. Lee et al. expressly teach that "increasing the LiCl concentration in the PAA-NMP casting solution gradually improves membrane permeation properties and makes the the membrane structure more porous with fine pores, and, hence, mechanically stronger" which is a teaching that clearly defines porosity and pore size as a result effective variables that can be adjusted by adjusting LiCl concentration to achieve the result of mechanically stronger structures.

Applicant alleges this teaching applies only to the elimination of macrovoids, and does not apply to further optimization of porosity and pore size of fine pores that would result in reaching the claimed ranges of porosity and pore size. However, the Examiner maintains that given the general teaching that increasing porosity and decreasing pore size provides mechanically stronger structures, a skilled artisan would be motivated to determine whether the result effective relationship persists into Applicant's claimed ranges; thus, since the Examiner is not aware of any unexpected results within the claimed ranges or new methods of achieving expected results, the Examiner still considers that it would have been obvious to a person having ordinary skill in the art at the time of the invention control porosity and pore size to the claimed ranges by controlling the amount of the LiCl alkali metal salt.